

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION

DONALD C. HOSKINSON,

*Plaintiff,*

VS.

JAMES CHATHAM, JOYCE  
CHATHAM, DEANNA L. RECTOR-  
HOSKINSON,

*Defendants.*

SA-21-CV-01288-FB

## ORDER

Before the Court is the above-styled cause of action, which was referred to the undersigned for all pretrial proceedings on January 25, 2022. The record reflects that Defendants still have not been served with this lawsuit, which was filed on December 28, 2021. Because Plaintiff is incarcerated in Virginia, the Court ordered service by the United States Marshals Service and extended the time for service until June 2, 2022. Plaintiff completed Forms 285 for each of the three named Defendants and provided an address for service (the same address for all three Defendants). Summonses were issued by the Marshals but were returned unexecuted as undeliverable with no forwarding address.

Without service of this suit on Defendants, Plaintiff cannot prosecute his action. Federal Rule of Civil Procedure 4 provides that “an individual . . . may be served in a judicial district of the United States by . . . following state law for serving a summons in an action brought in courts of general jurisdiction in the state where the district court is located.” Fed. R. Civ. P. 4(e)(1). Texas Rule of Civil Procedure 106(a) sets out the methods of personal service in Texas: (1) delivering to the defendant, in person, a true copy of the citation with the date of delivery

endorsed thereon with a copy of the petition attached thereto, or (2) mailing to the defendant by registered or certified mail, return receipt requested, a true copy of the citation with a copy of the petition attached thereto. Tex. R. Civ. P. 106(a)(1), (a)(2).

If a plaintiff's attempts to effectuate personal service are unsuccessful, a court may authorize substitute service upon receipt of an affidavit satisfying Rule 106(b). *See State Farm Fire & Cas. Co. v. Costley*, 868 S.W.2d 298, 299 (Tex. 1993). Texas Rule of Civil Procedure 106 provides:

(b) Upon motion supported by affidavit stating the location of the defendant's usual place of business or usual place of abode or other place where the defendant can probably be found and stating specifically the facts showing that service has been attempted under either (a)(1) or (a)(2) at the location named in such affidavit but has not been successful, the court may authorize service

(1) by leaving a true copy of the citation, with a copy of the petition attached, with anyone over sixteen years of age at the location specified in such affidavit, or

(2) in any other manner that the affidavit or other evidence before the court shows will be reasonably effective to give the defendant notice of the suit.

Tex. R. Civ. P. 106(b).

The Court finds good cause to provide Plaintiff with an additional 60 days to locate a proper address for each Defendant and to have Defendants served by the United States Marshals. *See Fed. R. Civ. P. 4(m)* (allowing for extension of time for service based on good cause). If at the end of the 60-day period Plaintiff still has been unable to locate an address for Defendants, he may file a motion for the approval of substitute service by filing an affidavit satisfying Texas Rule of Civil Procedure 106(b). Alternatively, Plaintiff may voluntarily dismiss this action by filing a notice of a dismissal pursuant to Federal Rule Civil Procedure 41.

**IT IS THEREFORE ORDERED** that the time to serve Defendants is extended until **August 9, 2022**.

**IT IS FURTHER ORDERED** that Plaintiff shall submit to the Clerk's Office a fully completed United States Marshals Service Form 285, including fully complete addresses, for each Defendant required to be served and the United States Marshals Service shall serve each Defendant with a copy of the Complaint and a copy of this order by certified mail, return receipt requested, on or before **August 9, 2022**. A copy of USM Form 285 is attached to this Order.

**IT IS FINALLY ORDERED** that, if Plaintiff is unable to locate a proper address for Defendants, that he file a motion for substitute service on or before **August 9, 2022**, or voluntarily dismiss this action.

SIGNED this 10th day of June, 2022.



ELIZABETH S. ("BETSY") CHESTNEY  
UNITED STATES MAGISTRATE JUDGE